(Decision No. C83-1932)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE APPLICATION OF AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. FOR THE TRANSFER OF EXISTING AUTHORITY TO PROVIDE INTRASTATE TELEPHONE AND TELECOMMUNICATIONS SERVICES IN COLORADO; APPROVAL OF AUTHORITY TO PROVIDE STATEWIDE 800 SERVICES; AND APPROVAL OF TARIFFS.	)	APPLICATION NO. 35967 ORDER OF THE COMMISSION GRANTING APPLICATION UNDER CERTAIN CONDITIONS

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December 23, 1983

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STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On November 8, 1983, AT&T Communications of the Mountain States, Inc. (hereinafter AT&T Communications or Applicant) filed Application No. 35967 wherein it seeks (1) authorization of the transfer of the "grandfather" authority of the Mountain States Telephone and Telegraph Company (Mountain Bell) in Colorado to serve as a public utility to AT&T Communications for intrastate interLATA (LATA refers to Local Access and Transport Areas) telephone and telecommunications services, (2) authorization to AT&T Communications to provide statewide "800" service, and (3) approval of the proposed tariffs filed as Exhibit D to the application. On December 13, 1983, AT&T filed a "Request to Amend Application and Notice of Address Change." Attached to said pleading was its amended application.

Notice of AT&T's original application was given by the Commission to all interested persons, firms and corporations on November 16, 1983. Said notice provided that any person desiring to file objection, intervene or participate as a party in Application No. 35967 was to file his objection, petition for leave to intervene, or other appropriate pleading to become a party within thirty days after the date of said notice. The notice also stated that the Commission would set the time and place of hearing in the within matter and serve notice thereof to parties not less than ten days before the time set for such hearing, unless the Commission were to find that the public interest or necessity requires that such hearing be held at an earlier date.

On December 12, 1983, Mountain Bell filed a Petition to Intervene.

On December 15, 1983, Satellite Business Systems (SBS) filed a "Petition of Satellite Business Systems for Leave to Intervene for Limited Purposes."

On December 16, 1983, NewVector Communications, Inc. (NewVector) filed a "Petition for Leave to Intervene." Also on December 16, 1983, GTE Sprint Communications Corporation (Sprint) filed a "Petition for Leave of the Public Utilities Commission to Intervene." Also on December 16, 1983, MCI Telecommunications Corporation (MCI) filed a "Petition for Leave of the Public Utilities Commission to Intervene."

On December 20, 1983, The Staff of the Public Utilities Commission filed an "Entry of Appearance" in the above-captioned application.

On December 12, 1983, Mountain Bell filed a "Motion for Setting and Issuance of Temporary Certificate."

On December 19, 1983, AT&T Communications filed a "Petition for Reconsideration of Order No. 18526 (sic) regarding Mountain Bell's Petition to Intervene." Also on December 19, 1983, AT&T Communications filed a "Response of AT&T Communications of the Mountain States, Inc., to Petition of Satellite Business Systems for Leave to Intervene for Limited Purposes."

On December 19, 1983, the Commission entered Decision No. C83-1877 setting Application No. 35967 for hearing at 2 p.m. on December 20, 1983. Said decision noted that Mountain Bell provides intrastate telephone and telecommunications services within the State of Colorado but that on January 1, 1984 Mountain Bell will no longer provide certain of such telephone and telecommunications services and that it was necessary that another entity be authorized by the Commission to provide those services on January 1, 1984. Accordingly, the Commission found that the public interest and necessity required the usual ten day notice be waived and that personal notice of the December 2, 1983 hearing date be given by the Commission in the following fashion: The Executive Secretary of the Commission was ordered to contact, by telephone on December 19, 1983, each of the entities who had filed petitions to intervene in this matter and to advise such entities of the scheduled hearing on Application No. 35967 which was set for 2 p.m. on December 20, 1983.

Harry A. Galligan, Jr., Executive Secretary of the Public Utilities Commission, filed an affidavit, dated December 19, 1983, wherein he states he personally advised, by telephone, respective counsel for AT&T Communications, Mountain Bell, MCI, NewVector, Sprint, and SBS, of the hearing to be held at 2 p.m. on Tuesday, December 20, 1983 in the Hearing Room of the Commission on the 5th Floor of the State Services Building, 1525 Sherman Street, Denver, Colorado to consider Application No. 35967.

Hearing with respect to Application No. 35967 was held by the Commission on Tuesday, December 20, 1983 pursuant to Decision No. C83-1877.

As a preliminary matter, at the December 20, 1983 hearing, the Petitions to Intervene of Mountain Bell and NewVector were granted, and the Petitions to Intervene for a Limited Purpose of SBS, Sprint, and MCI, respectively, were denied with leave to SBS, Sprint, and MCI to file on or before December 2, 1983,[1] petitions to intervene generally. AT&T Communications called one witness, Mr. Daniel Krueger, in support of its application. Mountain Bell called one witness, Mr. Ed Milker.

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[1] Counsel for MCI was present in the hearing room on December 20, 1983 and, accordingly, was advised of the Commission's determination with respect to its Petition for Leave to Intervene for a Limited Purpose. Counsel for Sprint and SBS (who were not present at the December 20, 1983 hearing) were telephonically advised on December 21, 1983 of the Commission's denial of their respective Petitions for Leave to Intervene for a Limited Purpose, but that each of them could file a petition to intervene generally on or before December 22, 1983. Sprint and SBS did not file petitions for leave to intervene generally on or before December 22, 1983.

The hearing was concluded on December 20, 1983. The herein instant matter has been submitted to the Commission for decision. Pursuant to the provisions of the Colorado Sunshine Act of 1972, CRS 1973, 24-6-401, et. seq., and Rule 32 of the Commission's Rules of Practice and Procedure, the subject matter of this proceeding is placed on the agenda for an open meeting of the Commission. At an open meeting the herein decision was entered by the Commission.

FINDINGS OF FACT

AT&T Communications, the Applicant herein, was incorporated in the State of Colorado in September of 1983. AT&T Communications is a wholly-owned subsidiary of the American Telephone and Telegraph Corporation (AT&T). One of the Intervenors, Mountain Bell, is a public utility engaged in the business of providing telephone utility service intrastate in the State of Colorado and other states. Mountain Bell's intrastate telephone business within the State of Colorado is subject to the jurisdiction of the Commission.

Mountain Bell, as of the date of this decision, is also a wholly-owned subsidiary of AT&T. However, as of January 1, 1984, Mountain Bell will no longer be a wholly-owned subsidiary of AT&T as a result of certain antitrust litigation brought by the United States Department of Justice against AT&T. It is not necessary, in this decision, to go into an extended history of the Department of Justice's antitrust litigation against AT&T.[2] For purposes of this decision suffice it to say that the Department of Justice and AT&T entered into a settlement of the antitrust litigation on January 8, 1982. The settlement agreement was submitted to United States District Judge Harold H. Greene, and on August 11, 1982, Judge Greene issued a 178 page opinion asking for modifications in certain specified areas with respect to the proposed settlement agreement between the Department of Justice and AT&T, but characterizing the settlement as generally in the public interest. On August 24, 1982, AT&T and the Department of Justice submitted a revised consent decree incorporating Judge Greene's modifications which he promptly approved. The modification of final judgment (MFJ) entered by the United States District Judge Harold H. Greene on August 24, 1982 in the case of United States v. American Telephone and Telegraph Company, Civil Action Nos. 74-1698, 82-0192, is reported at 552 Federal Supplement 131 (D.D.C. 1982). Judge Greene's decision was affirmed by the United States Supreme Court, sub nom. in the case of Maryland vs. United States, 103 S.Ct. 1240 (1983). The MFJ, and subsequent orders in the case of United States v. American Telphone and Telegraph Company, supra, requires Mountain Bell to cease providing interLATA telephone and telecommunications services after December 31, 1983. Additionally, Judge Greene ordered that Colorado be divided into two LATA's: The Colorado Springs LATA and the Denver LATA. AT&T Communications, in its application states that it has assumed from Mountain Bell the right to render intrastate interLATA telephone and telecommunications services in Colorado as a result of the MFJ. AT&T Communications attached to its original application, as Exhibit C, a summary analysis of the MFJ and subsequent orders which required the transfer contemplated by its application.

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[2] For generalized history of the Department of Justice's antitrust litigation against AT&T, see Decision No. C82-1905, dated December 7, 1982, in Investigation and Suspension Docket No. 1575, pages 13-22.

AT&T Communications intends to offer intrastate interLATA wide area telephone service (WATS) in Colorado, plus statewide 800 services, and accordingly requests authority to provide such services. AT&T Communications states that the provision of interstate and intrastate WATS after divestiture is still under review by the Federal District Court. AT&T Communications is committed to rendering intrastate interLATA telephone and telecommunications services between every point within Denver LATA and the Colorado Springs LATA which, as of the date of this decision, is being served by Mountain Bell. AT&T Communications states that its services will be rendered continuously without interruption or discontinuity of service after January 1, 1984.

The Commission states and finds that AT&T Communications has the financial, technical, and administrative capability to provide intrastate interLATA services, after December 31, 1983. No other provider of telephone and telecommunications services has filed an application with this Commission to provide intrastate interLATA services within the State of Colorado after December 31, 1983.[3]

At the hearing on December 20, 1983, Mountain Bell expressed a concern that AT&T Communications may intend to provide telephone and telecommunications services that go beyond intrastate interLATA authority. Mountain Bell and AT&T Communications agreed that the scope of the authority to be granted to AT&T Communications should be delimited by the provisions of the MJF. The Commission agrees that the Certificate should be so delimited, and in the order hereinafter to follow, the Certificate will be so delimited.

With its application, AT&T Communications submitted a set of proposed tariffs. The proposed tariffs were attached to its original application as Exhibit D. Again, Mountain Bell expressed a concern that one or more of AT&T's proposed tariffs would provide for services that go beyond the scope of intrastate interLATA services. Mountain Bell proposed and AT&T Communications agreed, that AT&T Communications would file a tariff rider to the effect that all of its proposed tariffs, as set forth in Exhibit D to its original application, would be delimited by the scope of the MFJ which would enable AT&T Communications to provide intrastate interLATA telecommunications services, currently provided by Mountain Bell, that Mountain Bell can no longer provide after December 31, 1983 pursuant to the terms and conditions of the MFJ entered on August 24, 1982 by Judge Greene, and subsequent orders entered in the antitrust case referred to above. Counsel for AT&T Communications indicated that in the event the proposed tariffs filed by AT&T Communications, with its application herein, became effective and one or more of said tariffs was subject to a later investigation or complaint, by the Commission or by any other entity, AT&T Communications would accept the burden of proof, that is, the burden of going forward and the burden of persuasion to prove that such tariff is within the scope of its Certificate (which, as indicated above, will be delimited by the scope of the MFJ). The Commission agrees with this suggestion and will incorporate the same in the order to follow.

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[3] By the grant of the Certificate of Public Convenience and Necessity herein, the Commission is neither adopting or rejecting the theory advanced by AT&T Communications that its authority is a "grandfathered" derivative of Mountain Bell's authority which has been "transferred" to AT&T Communications by the MFJ.

Another area of contention between AT&T Communications and Mountain Bell was the proposal of AT&T Communications, by its application herein, to provide statewide 800 service. AT&T Communications witness Krueger contended that the plan of reorganization (POR), as approved by Judge Greene, assigned the investment and technology to provide 800 service to AT&T. According to Mr. Krueger, AT&T, and its subsidiaries, are authorized to provide 800 service in the same fashion as it is done today, that is, on a statewide basis. Mr. Krueger also stated that to the extent that Mountain Bell may lose contribution to its support by the loss of 800 service, that Mountain Bell could be "kept whole" by the proper structuring of Mountain Bell's access tariffs.

Mr. Ed Milker, a witness for Mountain Bell, contended that AT&T Communications is entitled only to interLATA 800 service while Mountain Bell is entitled to intraLATA 800 service and that the revenues with respect thereto should be split between Mountain Bell and AT&T Communications based upon a sample usage factor of the network by intraLATA and interLATA customers.

With respect to out-WATS, we find that intraLATA and interLATA out-WATS customers can be identified on an individual call basis and that the revenues with respect to the out-WATS should flow either to AT&T Communications or to Mountain Bell depending upon whether the out-WATS call is interLATA (in which case revenues would go to AT&T Communications) or intraLATA (in which case revenues would go to Mountain Bell).

In summary, the Commission states and finds that the public interest and necessity requires the granting of a Certificate of Public Convenience and Necessity to AT&T Communications to provide intrastate interLATA telephone and telecommunications services from and after January 1, 1984 which services no longer may be provided by Mountain Bell pursuant to the MFJ. As a condition of its Certificate, AT&T Communications will be required to file a tariff rider to its proposed tariffs delimiting the application of the same to the scope of the intrastate interLATA services that are no longer capable of being provided by Mountain Bell pursuant to the MFJ. A further condition will be that, in the event that the Commission, or any other entity, enters upon investigation of or complaint with respect to any one or more of AT&T Communication's tariffs subsequent to January 1, 1984, AT&T Communication will assume the burden of proof, that is, the burden of going forward, and the burden of persuasion that the particular tariff under investigation is within the scope of its Certificate of Public Convenience and Necessity as delimited by the MFJ.

With respect to out-WATS service and 800 service, the Commission finds that AT&T Communications is entitled to provide such service on an intrastate interLATA basis whereas Mountain Bell is authorized to provide that service on an intrastate intraLATA basis. AT&T Communications, accordingly, will be authorized to provide out-WATS service and 800 service on an intrastate interLATA basis. We shall hereinafter order AT&T Communications and Mountain Bell to enter upon an arrangement for the determination of billing units on 800 service revenues on a sampling basis, and a determination of billing units with respect to out-WATS service on an actual basis, that is, by identifying whether the out-WATS call and the revenues derived therefrom are interLATA or intraLATA.

Further, AT&T Communications shall be ordered to enter upon an arrangement with Mountain Bell for Mountain Bell to bill and to collect from the customers of 800 WATS service the charges associated with the service and to remit to AT&T Communications that portion of derived revenues related to interLATA 800 WATS services as determined by the results of the sample usage factor (CMDS) less any appropriate billing costs such as those described by Mountain Bell witness Milker in the hearing.

In addition, AT&T Communications shall be ordered to file with this Commission on or before April 30, 1984, a report of total revenues derived from interLATA 800 WATS service for the first quarter of 1984. Such a reporting shall be made for each subsequent calendar quarter until final resolution of the issue of provision of WATS service by the United States District Court.

An appropriate order will be entered

O R D E R

THE COMMISSION ORDERS THAT:

1. AT&T Communications of the Mountain States, Inc. be, and hereby is authorized to amend its Application No. 35967 as set forth in its request to the same filed with the Commission on December 13, 1983.

2. The "Petition to Intervene" filed by the Mountain States Telephone and Telegraph Company on December 12, 1983, is granted.

3. The "Petition for Leave to Intervene" filed by NewVector Communications, Inc. on December 16, 1983, is granted.

4. The "Petition for Leave of the Public Utilities Commission to Intervene," filed by MCI Telecommunications Corporations on December 16, 1983, is denied.

5. The "Petition for Leave of the Public Utilities Commission to Intervene," filed by GTE Sprint Communications Corporation on December 16, 1983, is denied.

6. The "Petition of Satellite Business Systems for Leave to Intervene for Limited Purposes," filed by Satellite Business Systems on December 15, 1983, is denied.

7. After December 31, 1983 AT&T Communications of the Mountain States, Inc. be and hereby is authorized to provide intrastate interLATA telephone and telecommunications services, currently provided as of the date of this decision, by the Mountain States Telephone and Telegraph Company which the Mountain States Telephone and Telegraph Company is no longer authorized to provide after December 31, 1983. The Mountain States Telephone and Telegraph Company is no longer authorized to provide such services pursuant to the terms and conditions of the Modified Final Judgement entered on August 24, 1982 in the case of the United States v. American Telephone and Telegraph Company, Civil Action Nos. 74-1698, 82-0192, 552 F.Sup. 131, (D.D.C. 1982) aff'd sub nom. Maryland v. United States, 103 S.Ct. 1240 (1983), and subsequent orders entered therein. As so delimited this decision and order shall be deemed a CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY therefor, subject further to the following conditions:

a. AT&T Communications of the Mountain States, Inc. shall be authorized to file on one (1) day's notice, the tariffs filed with its application, as amended herein as Exhibit D except as hereinafter ordered. AT&T Communications of the Mountain States, Inc. shall file a tariff rider, simultanously with the filing of its Appendix D tariffs, stating in said rider that each of its tariffs is subject to the limitation of providing intrastate interLATA telephone and telecommunications services currently provided by the Mountain States Telephone and Telegraph Company, as of December 31, 1983. The Mountain States Telephone and Telegraph Company is no longer authorized to provide these services after December 31, 1983, pursuant to the terms and conditions of the Modified

Final Judgment entered on August 24, 1982, in the case of the United States v. American Telephone and Telegraph Company, Civil Action Nos. 74-1698, 82-0192, 552 Federal Supplement 131, (D.D.C. 1982) aff'd sub nom. Maryland v. United States, 103 S.Ct. 1240 (1983), and subseqent orders entered therein.

b. AT&T Communications of the Mountain States, Inc., in the event any one or more of its tariffs is subject to complaint or investigation of the Public Utilities Commission of the State of Colorado, or any other entity, subsequent to January 1, 1984, shall assume the burden of proof, that is, the burden of going forward and the burden of persuasion, to prove that each tariff under investigation or subject to complaint is within the scope of its certificated authority herein granted.

8. AT&T Communications of the Mountain States, Inc. be, and hereby is authorized to provide out-WATS and 800 service within the scope of the Certificate of Public Convenience and Necessity herein above granted. AT&T Communications of the Mountain States, Inc. shall enter into appropriate arrangements with the Mountain States Telephone and Telegraph Company for a determination of billing units based upon a sampling of 800 service to determine the respective interLATA and intraLATA bases thereof, and upon an actual identification of call basis with respect to out-WATS.

9. AT&T Communications of the Mountain States, Inc. be, and hereby is ordered to file tariffs for the provision of interLATA 800 WATS service and out-WATS service which imply the same methodology as used by the Mountain States Telephone and Telegraph Company in its tariffs for the same services on an intraLATA basis which will be in effect as of January 1, 1984.

10. AT&T Communications of the Mountain States, Inc. shall file with the Commission on or before April 30, 1984 a report of total revenues which accrue from interLATA 800 WATS service for the first three months of 1984. Such reporting will continue to be made for each subsequent calendar quarter until final resolution of the issue of provision of WATS service by the United States District Court in the case of United States v. American Telephone and Telegraph Company, Civil Action Nos. 74-1698, 82-0192.

11. All pending motions not otherwise disposed of by the decision and order herein be, and hereby are, denied.

12. The twenty (20) day time period provided for pursuant to 40-6-114(1) within which to file an application for rehearing, reargument, or reconsideration shall commence to run on the first day following the mailing or serving by the Commission of the decision herein.

13. This Order shall be effective forthwith.

DONE IN OPEN MEETING the 23rd day of December, 1983.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER DANIEL E. MUSE
NOT PARTICIPATING

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